

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KEVIN A. WARD, SR. and PAMELA WARD,
INDIVIDUALLY AND AS ADMINISTRATORS
OF THE ESTATE OF KEVIN A. WARD, JR.,
DECEASED

Plaintiffs,

v.

ANTHONY WAYNE STEWART,

Defendant.

NOTICE OF REMOVAL

Civ. Action No. 7:15-cv-1023 (DNH/TWD)

TO PLAINTIFFS KEVIN A. WARD, SR. and PAMELA WARD:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. Sections 1332, 1441(a) and 1446, Defendant, Anthony Wayne Stewart ("Stewart" or "Defendant"), by his attorneys, Woods Oviatt Gilman LLP, hereby files this notice of removal with the United States District Court for the Northern District of New York and, in support of such removal, respectfully states as follows:

Venue

The Northern District of New York, Utica Division, is the district and division embracing the place where the State Court action is pending. *See* 28 U.S.C. § 1441(a).

Notice to State Court and to Plaintiff

Written notice of the filing of this notice of removal will be promptly given to Plaintiff after filing notice of removal. Written notice of this notice of removal and a copy thereof will be filed with the Supreme Court of the State of New York, County of Lewis, as provided by 28 U.S.C. § 1446(d).

Basis for Removal

In support of the removal of this action to the United States District Court for the Northern District of New York, the Defendant, Anthony Wayne Stewart ("Stewart"), states as follows:

1. Plaintiffs, Kevin A. Ward, Sr. and Pamela Ward, commenced this action against the Defendant on August 7, 2015, in the New York State Supreme Court in and for the County of Lewis, bearing Index No. CA2015-000280 (a copy of the Plaintiffs' Complaint is attached hereto as **Exhibit "A"**).

2. Upon information and belief, service has not yet been validly effected pursuant to the New York Civil Practice Law and Rules.

3. This Notice of Removal is being filed within thirty (30) days after the filing of Plaintiffs' Complaint and is accordingly timely. *See* 28 U.S.C. § 1446(b).

4. This Court has jurisdiction over this case based upon diversity jurisdiction pursuant to 28 U.S.C. § 1332.

5. Plaintiffs have alleged that they are residents of the State of New York.

6. Defendant Stewart is a resident of the State of Indiana.

7. Therefore, there is complete diversity among the parties to the case, as the Plaintiffs and Defendant are citizens of different States. *See* 28 U.S.C. § 1332(a)(1).

8. Upon information and belief, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiffs have claimed damages arising out of and relating to the alleged wrongful death of their son Kevin Ward, Jr., alleging and seeking recovery for damages related to Kevin Ward, Jr.'s death, injuries, care, maintenance, medical and funeral expenses, as well as their own loss of support, services and society of their son. Plaintiffs have further claimed

damages relating to Kevin Ward Jr.'s alleged conscious pain, suffering and terror prior to his death, as well as to account for the Defendant's alleged intentional/reckless conduct.

9. All the requirements for this action to be removed to this Court have been met in accordance with 28 U.S.C. § 1441.

WHEREFORE, Defendant, Anthony Wayne Stewart, respectfully requests that the action now pending in the Supreme Court of the State of New York, Lewis County, bearing Index No. CA2015-000280, be removed to this Court.

Dated: August 21, 2015

Respectfully submitted,

WOODS OVIATT GILMAN LLP

By: /s/ Brian D. Gwitt

Brian D. Gwitt

Attorneys for Defendant

1900 Main Place Tower

Buffalo, New York 14202

Telephone: (716) 248-3213

Facsimile: (716) 248-3313

bgwitt@woodsoviatt.com

TO: W. Mark Lanier, Esq.
Judson Waltman, Esq.
Richard D. Meadow, Esq.
Evan M. Janush, Esq.
The Lanier Law Firm
126 East 56th Street, 6th Floor
New York, New York 10022
212-421-2800
Attorneys for Plaintiffs